ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
	)	
Regulatory Treatment of Mobile Services	)	

To: The Commission

REPLY COMMENTS OF BELLSOUTH

BellSouth Corporation; BellSouth Telecommunications, Inc.; BellSouth Cellular Corp. and Mobile Communications Corporation of America (collectively "BellSouth") hereby submit reply comments in the above-captioned proceeding.

Several parties, including Cox, Comcast, Time Warner, and MCI (the "Commenters") attempt to raise a number of issues regarding the rates charged for local exchange carrier interconnection to commercial mobile service providers and how such rates should be computed. The Commenters try to meld interconnection rate issues into their arguments addressing the scope of Section 332(c)(1)(B) or preemption of state regulation. The Commission sought comment on its authority to order interconnection and whether it should preempt state regulation of interconnection. 1/ It did not seek

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1/ *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Notice of Proposed Rule Making*, FCC 93-454 at ¶¶ 69-75 (released Oct. 8, 1993) (*NPRM*). BellSouth's Comments suggest that the Commission's interconnection decisions should be rendered on a case-by-case basis and that, as a matter of policy, preemption of state regulation is inappropriate. *See* Comments of BellSouth at 36 (filed November 8, 1993).

broad-ranging comment on all conceivable interconnection-related issues. Interconnection rate issues are not addressed in, and, therefore, are outside the scope of, the *NPRM*. [2/]

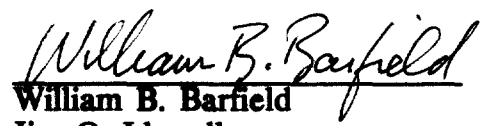
Assuming, *arguendo*, that these issues were not principally state matters, it would be particularly inappropriate for the Commission to address complex interconnection rate issues in this proceeding. The FCC has a statutory mandate to complete its rulemaking to implement the new Section 332 by February 7, 1994. The *NPRM* was issued to fulfill that requirement. To comply with the statutory mandate, the Commission established abbreviated comment and reply periods. Both the narrow purpose of this proceeding and the time constraints involved make clear that the Commission did not intend to prescribe rules and policies for the regulation of interconnection rates.

2/ The Administrative Procedure Act ("APA"), 5 U.S.C. § 553(b)(3), permits the adoption of substantive rules only after a notice of proposed rulemaking has been issued that gives notice of "either the terms or substance of the proposed rule or a description of the subjects and issues involved." This requires the agency to provide a proposal with detail and rationale "sufficient . . . to permit interested parties to comment meaningfully." *Florida Power & Light Co. v. United States*, 846 F.2d 765, 777 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989). The FCC's notice of proposed rulemaking "must disclose in detail the thinking that has animated the form of a proposed rule." *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35 (D.C. Cir.), *cert. denied*, 434 U.S. 829 (1977). Here, the FCC has not even given notice that it is considering adopting rules governing interconnection rates.

Based on the foregoing, the Commission must reject the Commenters' attempts to attach the collateral issue of interconnection rates to this expedited rulemaking.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.
BELLSOUTH CELLULAR CORP.
MOBILE COMMUNICATIONS CORPORATION OF AMERICA

By: 
William B. Barfield
Jim O. Llewellyn

1155 Peachtree Street, N.E.
Atlanta, Georgia 30367-6000


Charles P. Featherstun
David G. Richards

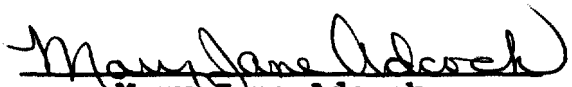
1133 21st Street, N.W.
Washington, D.C. 20036
(202) 463-4132

Their attorneys.

November 23, 1993

Certificate of Service

I, Mary Jane Adcock, hereby certify that on this 23rd day of November, 1993, copies of the foregoing "Reply Comments of BellSouth" were sent via first class United States mail, postage prepaid, to those named on the attached Service List.



Mary Jane Adcock

SERVICE LIST

Larry Blosser
MCI Communications Corporation
1801 Pennsylvania Ave., N.W.
Washington, DC 20006

Carl W. Northrop
Bryan Cave
700 13th St., N.W., Suite 700
Washington, DC 20005

Louis Gurman
Gurman, Kurtis, Blask & Freedman, Chartered
1400 16th St., N.W., Suite 500
Washington, DC 20036

Albert H. Kramer
Keck, Mahin & Cate
1201 New York Ave., N.W.
Washington, DC 20005-3919

C. Douglas Jarrett
Keller and Heckman
1001 G St., N.W., Suite 500 West
Washington, DC 20001

David L. Jones
Rural Cellular Association
2120 L. St., N.W., Suite 810
Washington, DC 20037

James D. Ellis
Southwwestern Bell Corporation
175 E. Houston, Rm. 1218
San Antonio, TX 78205

Jay C. Kethley
Sprint Corporation
1850 M St., N.W., Suite 1100
Washington, DC 20036

Thomas A. Stroup
Telocator
1019 19th St., N.W., Suite 1100
Washington, DC 20036

Jeffrey S. Bork
U S WEST, Inc.
1020 19th St., N.W., Suite 700
Washington, DC 20036

Martin T. McCue
Unites States Telephone Association
900 19th St., N.W., Suite 800
Washington, DC 20006-2105

Martin W. Bercovici
Keller and Heckman
1001 G St., N.W., Suite 500 West
Washington, DC 20001

Michaael D. Kennedy
Motorola
1350 I St., N.W.
Washington, DC 20005

Willliam J. Franklin
Law Offices of William J. Franklin
1919 Pennsylvania Ave., N.W., Suite 300
Washington, DC 20006-3404

John L. Bartlett
Wiley, Rein & Fielding
1776 K St., N.W.,
Washington, DC 20006

Richard M. Tettelbaum
Gurman, Kurtis Blask & Friedman, Chartered
1400 16th St., N.W., Suite 500
Washington, DC 20036

George Y. Wheeler
Koteen & Naftalin
1150 Connecticut Ave., N.W., Suite 1000
Washington, DC 20036

Randall B. Lowe
Jones, Day, Reavis & Pogue
1450 G St., N.W.
Washington, DC 20005

Frederick J. Day
1110 N. Glebe Road, Suite 500
Arlington, VA 22201-5720

Russell H. Fox
Gardner, Carton & Douglas
1301 K St., N.W., Suite 900, East Tower
Washington, DC 20005

Shirley S. Fujimoto
Keller and Heckman
1001 G St., N.W., Suite 500 West
Washington, DC 20001

Joel H. Levy
Cohn and Marks
1333 New Hampshire Ave., N.W., Suite 600
Washington, DC 20036

Linda C. Sadler
Rockwell International Corp.
1745 Jefferson Davis Highway
Arlington, VA 22202

Rodney L. Joyce
Ginsburg, Feldman and Bress
1250 Connecticut Ave., N.W.
Washington, DC 20036

Corwin D. Moore, Jr.
Personal Radio Steering Group
P.O. Box 2851
Ann Arbor, Michigan 48106

Thomas J. Keller
Verner, Liipfert, Bernhard, McPherson and Hand
901 15th St., N.W., Suite 700
Washington, DC 20005

Wayne V. Black
Keller and Heckman
1001 G St., N.W., Suite 500 West
Washington, DC 20001

John D. Lockton
Corporate Technology Partners
100 S. Ellsworth Ave., 9th Floor
San Mateo, CA 94401

Frederick M. Joyce
Joyce & Jacobs
2300 M St., N.W., Suite 130
Washington, DC 20037

David L. Nace
Lukas, McGowan, Nace & Gutierrez, Chtd.
1819 H St., N.W., 7th Floor
Washington, DC 20006

David E. Weisman
Meyer, Faller, Weisman and Rosenberg, P.C.
4400 Jenifer St., N.W., Suite 380
Washington, DC 20015

Phillip L. Spector
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L St., N.W., Suite 1300
Washington, DC 20036

Ashton R. Hardy
Hardy & Carey, L.L.P.
111 Veterans Boulevard, Suite 225
Metairie, LA 70005

Henry M. Rivera
Ginsburg, Feldman & Bress Chartered
1250 Connecticut Ave., N.W.
Washington, DC 20036

G. A. Gorman
North Pittsburgh Telephone Company
4008 Gibsonia Road
Gibsonia, PA 15044-9311

Peter Arth, Jr.
Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102

W. Bruce Hanks
Century Cellunet, Inc.
100 Century Park Ave.
Monroe, LA 71203

David Cosson
National Telephone Cooperative Association
2626 Pennsylvania Ave., N.W.
Washington, DC 20037

Daryl L. Avery
Public Service Commission
450 Fifth St., N.W.
Washington, DC 20001

Raul R. Rodriguez
Leventhal, Senter & Lerman
2000 K St., N.W., Suite 600
Washington, DC 20006

Raymond G. Bender, Jr.
Dow, Lohnes & Albertson
1255 23rd St., N.W., Suite 500
Washington, DC 20037

David A. Reams
Grand Broadcasting Corporation
P.O. Box 502
Perrysburg, OH 43552

Bruce D. Jacobs
Fisher, Wayland, Cooper and Leader
1255 23rd St., N.W., Suite 800
Washington, DC 20037

Henry Goldberg
Goldberg, Godles, Wiener & Wright
1229 19th St., N.W.
Washington, DC 20036

Elizabeth R. Sachs
Lukas, McGowan, Nace & Gutierrez
1819 H St., N.W., Suite 700
Washington, DC 20006

Michael F. Altschul
Cellular Telecommunications Industry Association
Two Lafayette Center, Third Floor
1133 21st St., N.W.
Washington, DC 20036

Kathy L. Shobert
Director, Federal Regulatory Affairs
888 16th St., N.W., Suite 600
Washington, DC 20006

William J. Cowan
New York State Department of Public Service
Three Empire State Plaza
Albany, New York 12223

Michael J. Shortley, III
Rochester Telephone Company
180 South Clinton Avenue
Rochester, NY 14646

Jeffrey L. Sheldon
Utilities Telecommunication Council
1140 Connecticut Ave., N.W., Suite 1140
Washington, DC 20036

Michael Hirsch
Geotek Industries, Inc.
1200 19th St., N.W., Suite 607
Washington, DC 20036

JoAnne G. Bloom
Ameritek
2000 W. Ameritech Center Drive
Hoffman Estates, IL 60195

John D. Lane
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K St., N.W.
Washington, DC 20006

Judith St. Ledger-Boty
Reed Smith Shaw & McClay
1200 18th St., N.W.
Washington, DC 20036

John T. Scott, III
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, DC 20004

Gail L. Polivy
GTE Service Corporation
1850 M St., N.W., Suite 1200
Washington, DC 20036

R. Gerard Salemme
McCaw Cellular Communications, Inc.
1150 Connecticut Ave., N.W., 4th Floor
Washington, DC 20036

Robert S. Foosaner
Nextel Communnication, Inc.
601 13th St., N.W., Suite 1110 South
Washington, DC 20005

James L. Wurtz
Pacific Bell
1275 Pennsylvania Ave., N.W.
Washington, DC 20004

Stuart F. Feldstein
Fleischman and Walsh
1400 Sixteenth St., N.W.
Washington, DC 20036

J. Bradford Ramsay
National Association of Regulatory
Utility Commissioners
1102 ICC Building
P.O. Box 684
Washington, DC 20004

Robert B. Kelly
1200 19th Street, N.W.
Washington, DC 20036

Thomas J. Casey
Skadden, Arps, Slate, Meagher & Flom
1440 New York Ave., N.W.
Washington, DC 20005

Edward R. Wholl
NYNEX Corporation
120 Bloomingdale Road
White Plains, NY 10605

Anne P. Jones
Sutherland, Asbill & Brennan
1275 Pennsylvania Ave., N.W.
Washington, DC 20004

Werner K. Hartenberger
Dow, Lohnes & Albertson
1255 23rd St., Suite 500
Washington, DC 20037

David L. Hill
O'Connor & Hannan
1919 Pennsylvania Ave., N.W., Suite 800
Washington, DC 20006